

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board

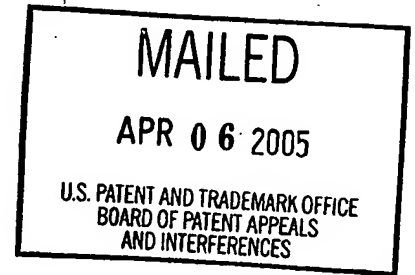
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT
APPEALS AND INTERFERENCES

Ex parte JOHN F. CONROY

Application 10/068,983
Appeal No. 2004-2214

ORDER AND ERRATUM



This application was electronically received at the Board of Patent Appeals and Interferences (BPAI) on August 27, 2004. The application record reveals that the BPAI Docketing Notice, mailed September 10, 2004, and Decision by the Board affirming the rejections, mailed November 17, 2004, has been erroneously mailed to an incorrect address. This mistake is deeply regretted.

Application 10/068,983
Appeal No. 2004-2214

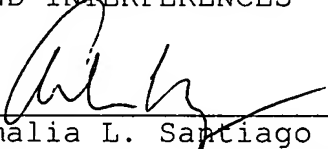
The Docketing Notice and Decision by the Board are being re-mailed and enclosed herewith as Attachments 1 and 2.

The November 17, 2004 "Decision" is hereby replaced by the decision mailed on even date herewith. All time periods for taking any subsequent action in connection with this appeal are to be calculated based on the date of the decision mailed herewith. Any confusion caused by the inadvertent error by the Board in the earlier "Decision" is regretted.

By Order of the

BOARD OF PATENT APPEALS
AND INTERFERENCES

By:



Amalia L. Santiago
Chief Board Administrator
(571) 272-9797

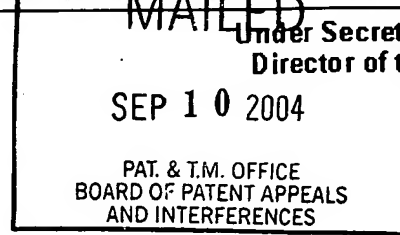
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Paper No:
Appeal No: 2004-2214
Application: 10/068,983
Appellant: John F. Conroy

Board of Patent Appeals and Interferences Docketing Notice

Application 10/068,983 was received from the Technology Center at the Board on August 27, 2004 and has been assigned Appeal No: 2004-2214.

A review of the file indicates that the following documents have been filed by appellant:

Appeal Brief filed on: March 22, 2004
Reply Brief filed on: July 01, 2004
Request for Hearing filed on: NONE

In all future communications regarding this appeal, please include both the application number and the appeal number.

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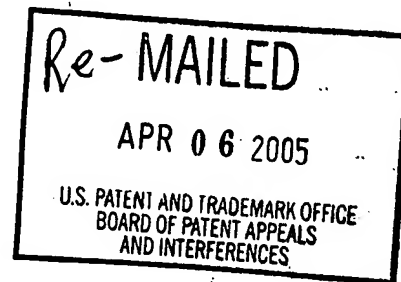
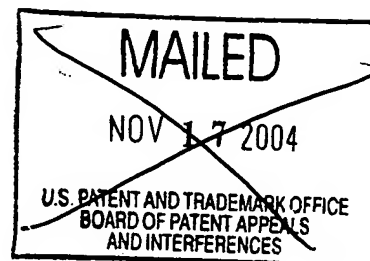
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOHN F. CONROY

Appeal No. 2004-2214
Application No. 10/068,983

ON BRIEF



Before PAK, KRATZ and TIMM, Administrative Patent Judges.
KRATZ, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's refusal to allow claims 1-9, 14-16, 20-23, 25, 26 and 28-32.

BACKGROUND

Appellant's invention relates to a bottle storage rack and a method of storage. An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below.

1. A storage space comprising:
a wine rack configured to be at least partially recessed in a wall and including a wine cradle configured to store a wine bottle with a stopper in contact with a stored wine.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Coglin	5,707,125	Jan. 13, 1998
Borgen	6,361,129	Mar. 26, 2002 (filed May 19, 2000)

Claims 1-7, 9, 16, 20-23, 25, 26, 31 and 32 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Coglin. Claims 8, 14, 15 and 28-30 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Coglin in view of Borgen.

We refer to the brief and reply brief and to the answer for a complete exposition of the opposing viewpoints expressed by appellant and the examiner concerning the issues before us on this appeal.

OPINION

Having carefully considered each of appellant's arguments set forth in the brief and reply brief, appellant has not persuaded us of reversible error on the part of the examiner. Accordingly, we will affirm the examiner's rejections for substantially the reasons set forth by the examiner in the answer. We add the following for emphasis and completeness.

§ 102(b) Rejection

At the outset, we note that appellant has stated that claims 1-7, 9, 16 and 20 (Group I) stand or fall together as a group and that claims 21, 22, 25, 26, 31 and 32 (Group II) stand or fall together as a group insofar as those claims are rejected as anticipated by Coglin (brief, page 3)¹ Claim 23 is grouped and argued separately. Consequently, we select claim 1 as the representative claim for the first claim grouping and claim 21 as the representative claim for the second claim grouping.

¹ Claims 8, 14, 15 and 28-30 stand rejected under § 103(a). In this regard, rejected claims 8, 14 and 15 are asserted by appellant as not being presented for review at page 2 of the brief not withstanding that those claims remain rejected under § 103(a) by the examiner and are listed as rejected claims at page 2 of the brief. Thus, along with claims 28-30, we shall consider claims 8, 14 and 15 as standing or falling together with the third grouping of claims in the portion of this decision directed to the examiner's § 103(a) rejection because all of those claims are subject to that common ground of rejection and are not separately argued.

We observe that anticipation by a prior art reference does not require that reference to recognize either the inventive concept of the claimed subject matter or the inherent properties that may be possessed by the prior art reference. See Verdegaal Bros. Inc. v. Union Oil Co., 814 F.2d 628, 633, 2 USPQ2d 1051, 1054 (Fed. Cir.), cert. denied, 484 U.S. 827 (1987). A prior art reference anticipates the subject matter of a claim when the reference discloses every feature of the claimed invention, either explicitly or inherently (see Hazani v. Int'l Trade Comm'n, 126 F.3d 1473, 1477, 44 USPQ2d 1358, 1361 (Fed. Cir. 1997) and RCA Corp. v. Applied Digital Data Systems, Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984)). However, the law of anticipation does not require that the reference teach what the appellant is claiming, but only that the claims on appeal "read on" something disclosed in the reference (see Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984)).

Anticipation under this section is a factual determination. See In re Baxter Travenol Labs., 952 F.2d 388, 390, 21 USPQ2d 1281, 1283 (Fed. Cir. 1991) (citing In re Bond, 910 F.2d 831, 833, 15 USPQ2d 1566, 1567 (Fed. Cir. 1990)). In the case before us, the examiner has determined that Coglin discloses, either

expressly or inherently, a storage space meeting every limitation of the invention set forth in representative claims 1 and 21, and separately argued claim 23.

Starting with representative claim 1, appellant argues that the wine rack and wine cradle features of representative claim 1 are not met by the wall mounted cabinet disclosed by Coglin. We disagree with that argument because representative claim 1 is not limited to any particular wine rack configuration or wine cradle configuration that structurally distinguishes representative claim 1 from the wall mounted storage cabinet, including shelves, as shown and described in Coglin. In this regard, we note that representative claim 1 does not require that the wine rack or wine cradle be configured to hold any particularly sized bottle or to be shaped in any particular fashion that distinguishes over the shelf-containing storage cabinet of Coglin. Indeed, at page 4, lines 29-31 of appellant's specification, it is made clear that appellant does not limit the terms "wine rack" and "wine cradle" as requiring any particular type of rack or cradle so long as the configuration selected allows for storage of a bottle (of no particularly specified size) thereon in a position such that a bottle cork can remain in contact with a stored liquid (wine) within the bottle. Here, the examiner has reasonably

determined that the shelved storage cabinet of Coglin presents a structure that the claim 1 language reads on. See, e.g., column 2, lines 27-30, column 3, lines 20-50 and column 4, lines 17-61 of Coglin.

Appellant argues that the shelves of the Coglin cabinet are flat and would not provide a cradling function. However, representative claim 1 is not limited to a "non-flat" wine cradle.² As our reviewing court stated in In re Bigio, ___ F.3d ___; 72 USPQ2d 209, 211 (Fed. Cir. 2004), "Nevertheless, this court counsels the PTO to avoid the temptation to limit broad claim terms solely on the basis of specification passages. . . In re Zletz, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989). Absent claim language carrying a narrow meaning, the PTO should only limit the claim based on the specification or prosecution history when those sources expressly disclaim the broader definition." See, e.g., Liebel-Flarsheim Co. v. Medrad, Inc., 358 F.3d 898, 906-09, 69 USPQ2d 1801, 1806-09 (Fed. Cir. 2004)

² See pages 323 and 968 of Webster's II New Riverside University Dictionary (New York, Houghton Mifflin Co., 1984) and the dictionary page referred to by appellants at page 1 of the reply brief for definitions of cradle and rack that are consonant with the examiner's view that the shelved storage cabinet of Coglin meets the structure (framework or stand) for supporting a wine bottle as required by representative claim 1.

(explaining requirement for an express disclaimer in either the specification or prosecution history).

Concerning the separately argued Group II claims and the representative claim 21 of that claim grouping, appellant makes substantially similar arguments, as those discussed above with respect to representative claim 1. In particular and with regard to the "bottle rack" required by representative claim 21, appellant basically maintains that the shelf-containing cabinet of Coglin does not include "the distinct features of bottle racks." However, appellant has not acted as a lexicographer by providing a restrictive definition of the claim term "bottle rack" in their specification that structurally differentiates representative claim 21 from Coglin's cabinet structure. In this regard, the wall recessed cabinet of Coglin is of a size and shape such that the cabinet could function to store a bottle in a horizontal position thereon. For example, Coglin teaches that the cabinet depth exceeds the wall cavity depth (typically about four inches) and the width of the cabinet can be such as to fit between studs about 16-64 inches on center such that general household items can be stored therein. See column 2, line 27 through column 3, line 50 and column 4, line 11 through column 5, line 50 of Coglin.

Consequently, we agree with the examiner's determination that representative claims 1 and 21 are prima facie anticipated by Coglin, and with the examiner's view that the arguments furnished in the briefs do not persuasively refute that determination of the examiner.

Regarding claim 23, appellant again argues that the asserted flat shelves of Coglin do not meet the wine cradle requirement of claim 23. However, for reasons discussed above, we disagree with appellant's viewpoint because claim 23 is not so limited as to exclude a shelf structure as disclosed in Coglin based on the wine cradle language.

It follows that we will affirm the examiner's § 102(b) rejection on this record.

§ 103(a) Rejection

Concerning the examiner's obviousness rejection over Coglin in view of Borgen, we select claim 28 as the representative claim. See footnote 1 above. Representative claim 28 is drawn to a method that requires the step of storing a bottle in a bottle rack with the long axis [of the bottle] substantially parallel to a wall plane in which the rack is at least partially recessed.

Coglin shows a prior art partially recessed storage cabinet (rack) for storing household items thereon. In addition, Borgen evidences that it was known prior to the time of the present invention to store bottles on a rack or shelf in vertical or horizontal positions. Moreover, appellant acknowledges at page 1 of the specification that it was well known to store a bottle of wine on the side thereof to keep the cork in contact with the wine. Based on those facts, it would have been obvious to one of ordinary skill in the art at the time of the invention to use a recessed cabinet, such as disclosed by Coglin for storing a bottle on the side thereof in a position as called for in representative claim 28. This is especially so because Coglin (column 2, lines 27-31) teaches that the recessed cabinet can be located in a kitchen, garage, dining room, etc. for storing household items. That disclosure coupled with the known storing of sealed bottles on the side thereof would have reasonably suggested the claim 28 bottle storage method to one of ordinary skill in the art with a reasonable expectation of success in so doing.

Appellant's arguments regarding a lack of a description of the claimed method in either Coglin or Borgen is noted. However, a finding of anticipation is not required for sustaining the

examiner's obviousness rejection. Here, based on the facts of record discussed above, there is ample motivation for one of ordinary skill in the art to employ the shelves of the storage cabinet of Coglein for supporting a bottle with the long axis thereof in a horizontal position thereon. As such, we will sustain the examiner's obviousness rejection, on this record.

CONCLUSION

The decision of the examiner to reject claims 1-7, 9, 16, 20-23, 25, 26, 31 and 32 under 35 U.S.C. § 102(b) as being anticipated by Coglein and to reject claims 8, 14, 15 and 28-30 under 35 U.S.C. § 103(a) as being unpatentable over Coglein in view of Borgen is affirmed.

AFFIRMED

CHUNG K. PAK
Administrative Patent Judge

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CATHERINE TIMM
Administrative Patent Judge

PFK/sld

Appeal No. 2004-2214
Application No. 10/068,983

Page 12

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bin, rabbi. Of, relating to, or characteristic of rabbis or their teachings, learning, writings, or language. —*rab-bin'i-cal-ly* adv.

Rabbinic Hebrew (rā-bin'ik) *n.* The Hebrew language as used in the learned writings of esp. medieval rabbis.

rabbinism (rā-bin'iz-əm) *n.* Rabbinical teachings and traditions.

rabbinist (rā-bin'ist) *n.* A strict observer of the Talmud and of rabbinical traditions. —*rab-bin-is'tic*, *rab-bin-ist'ic* (rā-bin'istik) *adj.*

rab-bit (rāb'it) *n.* *pl. rabbit or -bits.* [ME *rabēt*.] 1. A furry, long-eared, burrowing mammal of the family Leporidae, including the cottontail, or the commonly domesticated Old World species *Oryctolagus cuniculus*. 2. A hare. 3. The fur of a rabbit or hare. 4. Welsh rabbit. —*vi. -bit-ed, -bit-ing, -bits.* To hunt rabbits or hares. —*rab-bit'er* *n.*

rabbit ears *pl.n.* Informal. An indoor television antenna composed of two usu. adjustable rods connected to a base and swiveling apart at a V-shaped angle.

rabbit fever *n.* Tularemia.

rabbit-foot clover (rāb'it-fōōt') *n.* An Old World clover, *Trifolium arvense*, bearing pinkish-gray furlike flowers similar to rabbits' paws.

rabbit punch *n.* A chopping blow to the back of the neck.

rabble (rāb'əl) *n.* [ME, pack of animals.] 1. A tumultuous mob. 2. The lower classes.

rabble (rāb'əl) *n.* [Fr. *rdble*, fire shovel < OFr. *roable* < Med. Lat. *rotabulum* < Lat. *rotabulum* < *ruere*, to rake up.] Metallurgy. 1. An iron bar with one end bent like a rake, used to skim and stir molten iron in puddling. 2. A tool or mechanically operated device similar to a rabble used in refining or roasting furnaces. —*vt. -bled, -bling, -bles.* To stir or skim (molten iron) with a rabble.

rab-bler (rāb'lər) *n.* RABBLER.

rabble-rous-er (rāb'əl-rou'zər) *n.* A demagogue.

Rabé-lai-sian (rāb'ə-lā'zē-ən, -zhən) *adj.* 1. Of or pertaining to François Rabelais or to his works. 2. Marked by broad caricature and coarse, ribald humor.

Ra-bi (rū'bē) also **Ra-bi'a** (rā-bē'a) *n.* [Ar. *rabī*, spring.] Either the third or the fourth month of the Moslem year. —See table at CALENDAR.

rab-id (rāb'id) *adj.* [Lat. *rabidus* < *rabere*, to rave.] 1. Of or afflicted with rabies. 2. Fanatical; overzealous < a rabid sports fan >. 3. Raging; violent < rabid hostility >. —*ra-bid'i-ty* (rā-bid'ē-tē, rā-), *rab'id-ness* *n.* —*ra-bid'i-ty* *adv.*

rab-ies (rā'bēz) *n.* [NLat. < Lat. *rabies*, rage < *rabere*, to rave.] An acute, infectious, often fatal viral disease of most mammals that attacks the central nervous system and is transmitted by the bite of an infected animal. —*ra-bi-e'tic* (rā-bē'tik) *adj.*

rac-coon also **ra-coon** (rā-kōn) *n.* *pl. -coons or raccoon also racoon.* [Algonquian (Virginia) *arathkone*.] 1. A carnivorous North American mammal, *Procyon lotor*, with black masklike facial markings, grayish-brown fur, and a bushy black-ringed tail. 2. The fur of the raccoon. 3. An animal resembling or related to the raccoon.

race (rās) *n.* [Fr. *generation* < Ital. *razza*.] 1. A local geographic or global human population distinguished as a more or less distinct group by genetically transmitted physical characteristics. 2. Humanity as a whole. 3. A group of people united or classified together on the basis of common history, nationality, or geographic distribution < the Spanish race >. 4. A genealogical line; LINEAGE. 5. Biol. a. An animal or plant population that differs from others of the same species in the frequency of hereditary traits; SUBSPECIES. b. A breed or strain, as of domestic animals. 6. A characteristic quality, as the flavor of a wine.

race (rās) *n.* [ME *ras* < ON *rās*.] 1. a. A contest of speed, as in running, driving, or riding. b. *race*. A scheduled series of such contests held on a regular course. 2. A rivalry or competition for supremacy < the mayoral race >. 3. Rapid or steady onward movement < the race of time >. 4. a. A swift or strong current of water. b. The channel of such a current. c. An artificial channel built to transport water and utilize its energy. 5. A groove or track in which a machine part slides or rolls. 6. A slipstream. —*v. raced, racing, race*. —*vi.* 1. To compete in a contest of speed. 2. To move rapidly or at top speed. 3. To run too rapidly because of decreased resistance < a motor that was racing >. —*vt.* 1. To compete against in a race. 2. To place or enter in a race < I'll race my boat against yours >. 3. To cause (e.g., an engine with the gears disengaged) to run swiftly or too swiftly.

race (rās) *n.* [Ofr. *rais*, root < Lat. *radix*.] A root, esp. of ginger.

race-course (rās'kōrs) *n.* A racetrack.

race-horse (rās'hōrs) *n.* A horse bred and trained to race.

rac-eme (rā-sēm', rā-) *n.* [Lat. *racemus*, a bunch of grapes.] Bot. An inflorescence in which stalked flowers are arranged singly along a central stem, as in the lily of the valley.

rac-emic (rā-sēm'ik, -sēm'ik, rā-) *adj.* Of or relating to a chemical compound containing equal quantities of dextrorotatory and levorotatory isomers so that it does not rotate the plane of incident polarized light. —*rac'e-mism* (rās'ē-miz-əm, rā-sē'-) *n.*

racemic acid *n.* An optically inactive form of tartaric acid, C₄H₄O₆·H₂O, that can be separated into dextrorotatory and levorotat-

ory components and is occas. found in grape juice during wine making.

rac-emi-form (rā-sēm'fōrm) *adj.* Bot. Racemlike in form.

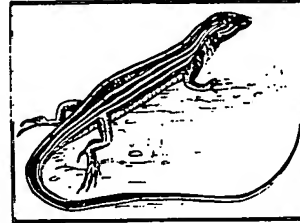
rac-emi-za-tion (rās'ē-mī-zā'shən) *n.* Conversion of an optically active substance to a racemic form.

rac-emo-se (rās'ē-mōs') *adj.* [Lat. *racemosus*, full of clusters < *racemus*, bunch of grapes.] 1. Bot. Resembling or growing in a raceme. 2. Anat. Having a structure of clustered parts < racemose glands >. —*rac'e-mose-ly* *adv.*

rac-er (rās'ər) *n.* 1. One that engages in races or is capable of great speed. 2. A swift, nonvenomous North American snake of the genus *Coluber*.

race riot *n.* A riot caused by racial hatred or unrest.

race-run-ner (rās'rūn'ər) *n.* A swift, highly active New World lizard of the genus *Cnemidophorus*.



racerunner
9 inches long including tail

race-track (rās'trāk') *n.* An often oval course designed for racing.

race-way (rās'wē') *n.* 1. RACE² 4c. 2. A usu. rectangular conduit in a building for safeguarding electric wires. 3. A racetrack.

ra-chis (rā'kis) *n.* *pl. -chises or -chides* (kō-dēz') [NLat. < Gr. *rhakhis*, backbone.] Biol. A main axis or shaft, as the spinal column, or the central stem of an inflorescence. —*ra'chi-al* *adj.*

ra-chi-tis (rā-kī'tis) *n.* [Gk. *rhakhitis*, disease of the spine < *rhakhis*, spine.] Rickets. —*ra-chit'ic* (rā-kī'tik) *adj.*

rac-ial (rā'shəl) *adj.* 1. Of, relating to, or characteristic of a race or ethnic group. 2. Of or existing between different races or ethnic groups < racial harmony >. —*ra'cial-ly* *adv.*

rac-ial-ism (rā'shəl-iz-əm) *n.* Chiefly Brit. var. of RACISM.

rac-ing form *n.* A printed program giving data about horse racing.

rac-ism (rā'siz-əm) *n.* 1. The notion that one's own ethnic stock is superior. 2. Prejudice or discrimination based on racism. —*rac'ist* *n.*

rack (rāk) *n.* [ME *rakke*, prob. < MDu., framework.] 1. A framework or stand intended to hold or display certain articles, esp.: a. A triangular frame for arranging billiard balls at the start of a game. b. A receptacle for livestock feed. c. A frame for holding bombs on an aircraft. d. An upright framework for holding cases of printing type or galley proof. 2. A toothed bar designed to mesh with another toothed machine part, as a gearwheel or pinion. 3. An instrument of torture for stretching and gradually dislocating the victim's body. 4. a. Intense anguish. b. A cause of intense anguish. 5. A set of angles. —*vt. racked, rack-ing, racks.* 1. To place (e.g., billiard balls) in a rack. 2. To torture by means of the rack. 3. To torment < I'm racked my body >. 4. To strain with great effort < racked their brains over the puzzle >. —*on the rack*. Under great stress or strain. —*rack up*. Slang. To accumulate or score < rack up points >. —*rack'er* *n.*

rack (rāk) *n.* [Orig. unknown.] Either of two gaits of horses, the pace or the single-foot. —*vi. racked, rack-ing, racks.* To go or move in a rack.

rack (rāk) *n.* [ME *rak*, prob. of Scand. orig.] A thin or broken layer of wind-driven clouds. —*vi. racked, rack-ing, racks.* To be driven by the wind, as clouds.

rack (rāk) *n.* [Var. of WRACK.] Destruction < rack and ruin >. —*usage*: In modern usage, *rack* is an acceptable variant of *wrack* meaning "severe damage." Thus, it is correct to write either *rack and ruin* or *wrack and ruin*.

rack (rāk) *vt. racked, rack-ing, racks.* [ME *rakken* < Ofr. *arracar* < *raca*, stems and husks of grapes.] To drain (cider or wine) from the dregs.

rack (rāk) *n.* [Prob. < RACK¹.] 1. A wholesale rib cut of lamb between the shoulder and the loin. 2. A crown roast of lamb.

rack and pinion *n.* A device for the interconversion of linear and rotary motion, consisting of a pinion and a mated rack.

rack-et also **rac-quet (rāk'it) *n.* [Ofr. *raquette* < Ar. *rdhet*, palm of the hand.] 1. A piece of sports equipment consisting of a round or oval frame with a network of tightly laced strings and a handle, used to strike a ball or shuttlecock. 2. A wooden paddle, as one used in table tennis. 3. *rackets* (sing. in number). A game similar to tennis, played in a four-walled court.**

ā pat ā pay ā care ā father ē pet ē be hw which ī pl:
ī tie īr pier ō pot ō toe ō paw, for oi noise ōō too

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